

BAKER & STALZER

Attorneys at Law

Guardianship & Conservatorship

What should I do if I have a loved one who cannot take care of themselves any more?

Unless your loved one has signed a Financial Power of Attorney and a Health Care Directive, you will have to go to Court to be appointed as the Guardian and/or Conservator for your loved one.

What Does a Guardian do?

A Guardian is a person appointed by the Probate Court to make personal decisions for an incapacitated person, such as decisions relating to medical treatment or place of residence. For example, it is sometimes necessary to have a Guardian appointed in order to obtain the authority to place an incapacitated elderly person into a nursing home or assisted living facility.

What Does a Conservator do?

A Conservator is a person appointed by the Probate Court to receive, collect and make decisions concerning the property and assets of an incapacitated person. The Conservator is required to manage the assets of the incapacitated person at all times in the best interests of the incapacitated person, and to provide for the care, support, health and welfare of the incapacitated person.

Why Does a Court Have To Be Involved?

The law requires a Court process because significant rights of the incapacitated person are being taken away, and also to help ensure that an appropriate person is named as Guardian or Conservator.

How Does The Court Process Work?

In general, the process begins with filing of a petition requesting appointment of a Guardian or Conservator for your loved one. Next, the Court will order a medical evaluation of your loved one, will appoint an attorney to serve as legal counsel for your loved one, and will also appoint a "Guardian ad Litem" to represent the best interests of your loved one. After the evaluation is completed, there will be a Court hearing to determine whether your loved one is incapacitated and, if so, the Court will appoint a Guardian and/or Conservator. If you are appointed as Conservator, you will be required to post a bond.

Is There Any Way to Avoid Guardianship and Conservatorship?

Yes. If your loved one has a relatively simple situation, then execution of a Financial Power of Attorney and Health Care Directive should enable you to take care of your loved one's medical needs and manage their financial assets.

For more complex situations, a Financial Power of Attorney may not be sufficient, on its own, to handle financial matters. For example, in situations where there is no suitable relative who can serve under the Financial Power of Attorney, where professional management of a large dollar value of assets is needed, or where there is a need or desire to avoid probate, then a better option may be to set up a Living Trust.

What Is a Living Trust?

It's a Revocable Trust that you set up while you are alive. Living Trusts are not necessary for everyone, but we recommend them to clients who are concerned about becoming incapacitated and want to be sure that someone can manage their affairs, who have a situation where someone may contest the terms of the Will, or who value privacy and want to avoid public Court filings. There is also generally a cost savings, since you should be able to avoid the legal fees and costs associated with probate. Many of our older clients are choosing Living Trusts, to make settling their estates easier and simpler for their families.

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